



1 ENERGY AND ENVIRONMENT CABINET

2 Department for Environmental Protection

3 Division of Waste Management

4 (Amended After Comments)

5 401 KAR 42:080. Classification of UST systems containing petroleum and listing of associated  
6 cleanup levels.

7 RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, [224.46,] 224.60, 322, 322A, 40 C.F.R.  
8 Part 280 Subparts F, G, [~~Part 281,~~] 42 U.S.C. 6991-6991c

9 STATUTORY AUTHORITY: KRS 224.10-100, 224.60-105, 224.60-137[, ~~40 C.F.R. Part~~  
10 ~~280 Subparts F, G, Part 281, 42 U.S.C. 6991c~~]

11 NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-105 requires the  
12 cabinet[~~Environmental and Public Protection Cabinet~~] to promulgate administrative regulations  
13 on underground storage tank (UST) systems to protect public health and the environment. The  
14 statute recognizes that the administrative regulations may distinguish between types, classes, and  
15 ages of UST systems. KRS 224.60-137 requires the cabinet to adopt standards for corrective  
16 action for a UST system release of petroleum into the environment. [~~401 KAR Chapter 42~~  
17 ~~identifies requirements for UST systems containing petroleum.~~] This administrative regulation  
18 establishes [site] classification and screening levels[~~corrective action standards~~] for UST systems  
19 containing petroleum.

20 Section 1. Scope and Applicability. (1)(a)1. An owner or operator of a UST system for  
21 which a Notice of Intent to Permanently Close Underground Storage Tank System containing

1 petroleum was submitted or a confirmed UST system release of petroleum was reported to the  
2 cabinet on or after April 18, 1994 shall be required to classify the UST system in accordance  
3 with this administrative regulation.

4 2. The owner or operator shall, if the UST system is permanently closed or if otherwise  
5 directed by the cabinet in order to appropriately classify the UST system, submit a Classification  
6 Guide, DEP 8056, which shall be completed by a professional engineer or a professional  
7 geologist pursuant to KRS Chapters 322 and 322A.

8 3. The Classification Outline shall be used in completing the Classification Guide for  
9 determining the classification of a UST system.

10 4. The Classification Outline lists the applicable screening levels for petroleum  
11 constituents for each classification.

12 (b) An owner or operator of a UST system who either submitted a Notice of Intent to  
13 Permanently Close Underground Storage Tank System or reported a confirmed UST system  
14 release of petroleum to the cabinet, or took a UST system out of operation, prior to April 18,  
15 1994, shall not be required to classify in accordance with this administrative regulation, unless:

16 1. After October 1, 2011, the owner or operator reports an additional confirmed UST  
17 system release of petroleum to the cabinet; and

18 2. The additional confirmed UST system release of petroleum is commingled with a UST  
19 system release of petroleum associated with the Notice of Intent to Permanently Close  
20 Underground Storage Tank System submitted prior to April 18, 1994 or the UST system release  
21 of petroleum reported to the cabinet prior to April 18, 1994.

1       (c) An owner or operator of a UST system that chooses, after October 1, 2011, to remove  
2       a UST system from the ground that was taken out of operation prior to April 18, 1994, shall not  
3       be required to classify in accordance with this administrative regulation.

4       (d) An owner or operator may submit, in accordance with 401 KAR 30:020, Section 2, a  
5       written request for a variance to the applicable screening levels established in accordance with  
6       this administrative regulation if:

7       1. Prior to October 1, 2011:

8       a. A Notice of Intent to Permanently Close Underground Storage Tank System containing  
9       petroleum was submitted to the cabinet; or

10       b. A confirmed UST system release of petroleum was reported to the cabinet; and

11       2. The allowable levels previously applicable to the UST facility are less stringent than  
12       the screening levels established by this administrative regulation.

13       **(2) An owner or operator, required to classify a UST system in accordance with this**  
14       **administrative regulation, shall utilize the screening levels established in the Classification**

15       **Outline, regardless of the date of permanent closure of the UST system.**~~[An owner or~~

16       ~~operator who either submits a notice of intent to permanently close a UST system containing~~

17       ~~petroleum or reports a confirmed UST system release of petroleum to the cabinet after the~~

18       ~~effective date of this administrative regulation, shall, when the UST system is permanently~~

19       ~~closed or when otherwise directed by the cabinet in order to appropriately classify the UST~~

20       ~~system, submit a Classification Guide, DEP-8056, (January 2006). The Classification Outline,~~

21       ~~(August 2006) shall be used in completing the Classification Guide, DEP-8056, (January 2006),~~

22       ~~for determining the classification of a site. The Classification Outline, (August 2006), also sets~~

1   ~~forth the applicable cleanup levels for petroleum constituents for each classification that shall be~~  
2   ~~complied with by the owner or operator in completing corrective action.~~

3       ~~(2) The owners and operators of a UST system containing petroleum who have, prior to~~  
4   ~~the effective date of this administrative regulation, either submitted a notice of intent to~~  
5   ~~permanently close the UST system, or reported a confirmed UST system release of petroleum to~~  
6   ~~the cabinet, shall comply with the classification requirements and cleanup levels for all~~  
7   ~~constituents, with the exception of lead in soils, that were in existence when the notice of intent~~  
8   ~~to permanently close UST system was received by the cabinet or the confirmed release was~~  
9   ~~reported to the cabinet.~~

10       ~~(3) [The screening][cleanup] [level for lead in soils, established][contained] [in the~~  
11   ~~Classification Outline, shall apply to all releases from a UST system] [releases-][containing~~  
12   ~~waste oil including those occurring prior to the effective date of this administrative regulation.]~~

13       Section 3. Extensions. (1) The owner or operator of a UST system may request an  
14   extension to a deadline established by this administrative regulation or established by the cabinet  
15   in writing pursuant to this administrative regulation.

16       (2) The extension request shall be submitted in writing and received by the Underground  
17   Storage Tank Branch of the Division of Waste Management prior to the deadline.

18       (3) The cabinet may grant an extension, if the cabinet determines that an extension would  
19   not have a detrimental impact on human health or the environment.

20       ~~[Section 2. Affected Property Owner Consent. If an affected off-site property owner~~  
21   ~~consents, the allowable residual soil levels applicable on-site may be utilized in addressing~~  
22   ~~contamination within the property boundaries of that consenting off-site property owner. The~~  
23   ~~consent shall be submitted to the cabinet on the "Affected Property Owner Consent Form", DEP~~

1 8057, (January 2006), and shall be accompanied by a site map identifying the location and  
2 address of the affected property in relation to the site.]

3 Section 4[3]. Incorporation by Reference. (1) The following material is incorporated by  
4 reference:

5 (a) "Classification Outline", (April 2011)[(August 2006)]; and

6 (b) "Classification Guide", DEP 8056, (April 2011).[(January 2006);]

7 [(c) "Affected Property Owner Consent Form", DEP 8057, (January 2006); and

8 (d) "Kentucky Guidance for Ambient Background Assessment", (January 2004).]

9 (2)(a) This material may be inspected, copied, or obtained, subject to applicable  
10 copyright law, at the Division of Waste Management, 200 Fair Oaks Lane, Second  
11 Floor,[Underground Storage Tank Branch, 81 C. Michael Davenport Blvd,] Frankfort, Kentucky  
12 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

13 (b)[(3)] This material is also available on the[may also be obtained by calling the]  
14 Division of Waste Management's[Management at (502) 564-5981 or on the division's] Web site  
15 at http://waste.ky.gov/ust[page located at www.waste.ky.gov].

401 KAR 42:080 approved for filing.

7/13/11  
Date

LK Peters  
Leonard K. Peters, Secretary  
Energy and Environment Cabinet

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Cassandra Jobe

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes classification and screening levels for UST systems containing petroleum.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary in order to classify UST systems containing petroleum. This classification is used to for ranking purposes in accordance with 401 KAR 42:290.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

This administrative regulation conforms to the content of the authorizing statutes by incorporating the results of the UK study into a classification scheme for UST systems.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This administrative regulation assists in the effective administration of the statute by providing for screening levels based on the UK study.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

The amendment clarifies that all screening levels are applicable.

(b) The necessity of the amendment to this administrative regulation:

This amendment is necessary to clarify the screening levels.

(c) How the amendment conforms to the content of the authorizing statutes:

The amendment conforms to the content of the authorizing statutes by using the screening levels that resulted from the UK study.

(d) How the amendment will assist in the effective administration of the statutes:

The amendment will assist in the effective administration of the statute by using screening levels for UST system classification.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

There are approximately 11,500 UST systems registered with the agency.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

An owner or operator of a UST system for which a Notice of Intent to Permanently Close Underground Storage Tank System containing petroleum was submitted or a confirmed UST system release of petroleum was reported to the cabinet on or after April 18, 1994 will have to classify the UST system by completing a new Classification Guide.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

The Classification Guide is simplified and no cost should be incurred to amend classification in accordance with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

As a result of amended classification, screening levels will be adjusted and ranks will be adjusted for UST systems. This could lead to some UST facilities receiving No Further Action letters and could lead to others getting corrective action done more quickly.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially:

It will not cost the agency any additional funding to implement this amendment.

(b) On a continuing basis:

It will not cost the agency any additional funding to implement this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

The source of funding to be used for implementation and enforcement of this amendment is the PSTeAF and tank fees.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

An increase in fees is not necessary to implement this amendment.

(8) State whether or not this administrative regulation established any fees or directly or



indirectly increased any fees:

This amendment does not establish or affect any fees.

(9) TIERING: Is tiering applied? (Explain why or why not)

Tiering is applied. UST systems are classified based on the proximity to domestic-use sources and screening levels based on the results from the UK study.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No. 401 KAR 42:080

Contact Person: Cassandra Jobe

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)?

Yes X No       

If yes, complete questions 2-4.

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

The Division of Waste Management

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 224.60-105; 224.60-137

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

This amendment does not generate any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

This amendment does not generate any revenue.

(c) How much will it cost to administer this program for the first year?

It will not cost the agency additional funding to implement this amendment.

(d) How much will it cost to administer this program for subsequent years?

It will not cost the agency additional funding to implement this amendment.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

## Detailed Summary of Material Incorporated by Reference

I. This administrative regulation incorporates by reference the "Classification Guide", DEP 8056, (April 2011). This document is to be submitted by an owner or operator of a UST system for which a Notice of Intent to Permanently Close Underground Storage Tank System containing petroleum was submitted or a confirmed UST system release of petroleum was reported to the cabinet on or after April 18, 1994.

This document consists of 5 pages.

II. This administrative regulation incorporates by reference the "Classification Outline", (April 2011). This document is to be used when an owner or operator of a UST system is completing the Classification Guide.

This document consists of 13 pages.

**STATEMENT OF CONSIDERATION RELATING TO**  
**401 KAR 42:080**  
**Amended After Comments**

Energy and Environment Cabinet  
Department for Environmental Protection  
Division of Waste Management

**I.** A public hearing on 401 KAR 42:080 was held on May 24, 2011 at 10:00 a.m. in Conference Room 301 D at 300 Fair Oaks Lane, Frankfort, Kentucky, 40601. No verbal comments were received on 401 KAR 42:080.

**II.** The following people submitted written comments:

| <u>Name and Title</u> | <u>Affiliation</u>            |
|-----------------------|-------------------------------|
| Lorri Zella, P.E.     | American Electric Power (AEP) |
| William Ackland, P.G. | SRW Environmental Services    |

**III.** The following people responded to comments:

| <u>Name and Title</u>           | <u>Affiliation</u>           |
|---------------------------------|------------------------------|
| Anthony Hatton, Director        | Division of Waste Management |
| Rob Daniell, Manager, UST       | Division of Waste Management |
| Cassandra Jobe, Supervisor, PPA | Division of Waste Management |

**IV. Summary of Comments and Responses**

**(1) Subject Matter: Screening level for lead.**

**(a) Comment: Lorri Zella, AEP**

PAHs and BTEX are better indicators of the presence of organic contaminants in soils and should be adequate for the detection of any contamination. There is no mention of TPH in these proposed regulations for UST systems containing waste oil since lead is no longer an additive used in gasoline products. Revise the regulation to incorporate the use of PAHs and BTEX as indicators of the presence of organic contaminants. Revise the regulation to incorporate TPH in waste oil.

**(b) Response:**

The Division disagrees with the use of TPH as an indicator. The Division already requires total lead, BTEX, and PAHs for UST systems containing waste oil. These

requirements are found in 401KAR 42:060, 42:070, and 42:080. Therefore, the cabinet has not made a change in response to this comment.

**(2) Subject Matter: Wellhead protection areas.**

**(a) Comment: William Ackland, SRW**

Wellhead protection area is not included for consideration in either Soil Class A Section 1.0 or for Groundwater. Do the draft regulations intend to allow elevated soil and groundwater concentrations to exist inside an established wellhead protection area?

**(b) Response:**

The screening levels applied to individual UST facilities adequately protect human health and the environment. Additionally, the corrective action process will take into account various criteria, including the existence of a well-head protection area, to determine necessary remedial actions. Therefore, the cabinet has not made a change in response to this comment.

**(3) Subject Matter: Groundwater classification.**

**(a) Comment: William Ackland, SRW**

Groundwater section: Depth to water is no longer a factor, but potential domestic supply is also no longer a factor. Dropping the question of the depth to water, is sensible because the primary issue is not depth to water, but the likelihood of that water being used for domestic purposes. However, what if a municipal supply is present, but there is no prohibition against installation of domestic wells and groundwater is a potential domestic supply (i.e. decent quality, good production)? A domestic well could be installed within 328 feet of the UST system at any time in the future. So, if groundwater is a potential domestic supply and groundwater use is not prohibited, then it would seem reasonable to protect that water accordingly.

**(b) Response:**

In every applicable case, UST facilities will be required to utilize the more stringent groundwater screening levels established in the Classification Outline beyond the point of compliance. The Corrective Action Outline requires a determination of quality and quantity of groundwater to identify a usable groundwater resource for domestic-use. Final remedial goal decision making, within the corrective action process, will take this into account to identify necessary remedial actions.

In the event that a No Further Action letter is issued, and new information is identified regarding the installation of a domestic-use well, the Division will exercise the authority established in 401 KAR 42:060, Section 9 or 401 KAR 42:070, Section 9, to require additional remediation as necessary to protect human health and the environment.

## **V. Summary of Action Taken by Promulgating Agency**

**401 KAR 42:080: Comments were considered and the following changes are suggested:**

Page 3

Section 1(2)

Line 13

After “(2)”, insert “An owner or operator, required to classify a UST system in accordance with this administrative regulation, shall utilize the screening levels established in the Classification Outline, regardless of the date of permanent closure of the UST system.”

Delete the remainder of subsection (2) in its entirety.